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FM AMEMBASSY HARARE
TO RUEHC/SECSTATE WASHDC IMMEDIATE 4958
INFO RUCNSAD/SOUTHERN AF DEVELOPMENT COMMUNITY COLLECTIVE
RUEHUJA/AMEMBASSY ABUJA 2384
RUEHAR/AMEMBASSY ACCRA 3058
RUEHDS/AMEMBASSY ADDIS ABABA 3171
RUEHRL/AMEMBASSY BERLIN 1600
RUEHBY/AMEMBASSY CANBERRA 2434
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RHEHAAA/NSC WASHDC

UNCLAS SECTION 01 OF 02 HARARE 000775

SENSITIVE
SIPDIS

AF/S FOR B. WALCH
DRL FOR N. WILETT
ADDIS ABABA FOR USAU
ADDIS ABABA FOR ACSS
NSC FOR SENIOR AFRICA DIRECTOR M. GAVIN
STATE PASS TO USAID FOR L. DOBBINS AND E. LOKEN

E.O. 12958: N/A
TAGS: [PHUM](#) [EAID](#) [ASEC](#) [PGOV](#) [PREL](#) [ZI](#)
SUBJECT: ZIM SUPREME COURT: SECURITY FORCES VIOLATED MUKOKO'S
CONSTITUTIONAL RIGHTS

REF: A. HARARE 524
[1B.](#) HARARE 29

SUMMARY

[11.](#) (U) On September 28 the Chief Justice of the Supreme Court of Zimbabwe issued a ruling on behalf of a unanimous court that the constitutional rights of human rights activist Jestina Mukoko had been violated in connection with her abduction, torture, and detention by State agents last year. The Court further ruled that her rights had been violated to such an extent as to warrant a permanent stay of prosecution in the pending terrorism case against her. Finally, the Court ruled that a related pending case against eight others should also be stayed. The Court will issue a detailed document describing the justification for the ruling in the future. A court-ordered investigation into the circumstances of the abductions of Mukoko and the others is pending, as are civil suits for damages against police, security agents, and government officials. END SUMMARY.

Court Grants Reprieve

[12.](#) (U) In an overflowing courtroom at the Supreme Court, Chief Justice Godfrey Chidyausiku read the unanimous finding of the Court that Jestina Mukoko's constitutional rights were violated to such an extent that she is entitled to a permanent stay of the prosecution against her. Specifically, the State violated her rights under sections 13(1), 15(1) and 18(1) of the constitution. These sections afford protection of the rights to liberty, to freedom from torture, and to the full protection of the law. Mukoko's application to the

Supreme Court for a stay of proceedings based on her abduction in December 2008 was heard in June this year (Ref A). During the June hearing, her lawyers described her abduction and torture in detail and the State admitted its agents had tortured Mukoko. The underlying charge of terrorism against Mukoko was based on an alleged plot to recruit insurgents to launch an armed insurgency from Botswana.

13. (U) Today's Supreme Court ruling also applies to eight other abductees who faced similar charges. Another group that was abducted in the same time frame and is charged with a 2008 series of bombings of police stations, railroad tracks, and bridges, was not included in the September 28 ruling; that application is pending separately with the Supreme Court. Lawyers tell us that unless the State can somehow differentiate the cases, the "bombers" should also receive the same stay of prosecution from the Supreme Court.

14. (U) With the stay of prosecution, police will return Mukoko and the other defendants their passports, and they will no longer have to report regularly to the police, as required by the bail granted in February. The Court will issue a detailed written ruling at some point in February. The Court will issue a detailed written ruling at some point in the future, but this may not happen for several months.

Still Pending: Prosecution for
Perpetrators and Civil Suits

15. (U) The abductees' court battles are not over yet, but they are moving from defense to offense. The nagging issue of prosecution

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against those who ordered and carried out the abductions will likely now move to center stage. In January, a magistrate's court ordered police to investigate the abductions, torture, and illegal detentions, including the identities of all those responsible. At the time, then-Minister of State Security, Didymus Mutasa, submitted an affidavit attempting to block the investigation; the court nonetheless ordered police to investigate and to file a report by February. To date, the police have not done so. Lawyers believe that, although today's ruling is a significant acknowledgement of the State's illegal actions, justice will not fully be served until those responsible for the abuses are held accountable.

16. (U) In addition, the abductees have already filed civil suits for damages. Mukoko and other abductees separately sued two cabinet ministers and the security agents who abducted them for a combined USD 19.2 million in damages for unlawful abduction, detention and deprivation of liberty. In an application filed at the High Court on July 27, Mukoko claimed USD 220,000 from Defense Minister Emmerson Mnangagwa and co-Ministers of Home Affairs Kembo Mohadi and Giles Mutsekwa. Mukoko also sued State Security Minister Didymus Mutasa, Attorney General Johannes Tomana, Police Commissioner General Augustine Chihuri, Police Chief Superintendent Peter Magwenzi, and Walter Tapfumaneyi, an agent of the State's Central Intelligence Organization. The suit against Tomana alleges he failed to meet his constitutional obligation to ensure the arrest and prosecution of her alleged kidnappers. The High Court has not yet set a date to hear Mukoko's application.

17. (SBU) In addition to the pending civil suits, earlier this month some abductees sent a letter to the Attorney General's head of litigation, Tawanda Zvekare, seeking assistance in returning the property that was taken by the State security agents who abducted them in 2008. For example, Gandhi Mudzingwa lost his truck, USD 310, a cell phone, and shoes. Fidelis Chiramba lost three cameras, shoes, and a belt. Freelance journalist Andrisson Manyere lost USD 4,500, a laptop computer, three cell phones, a digital camera, and his passport. Mukoko jokingly told us that she was "lucky" because since she was taken in the middle of the night, without even a chance to get her glasses, the security agents didn't have anything of hers to keep. Zvekare has not responded or acknowledged receipt of the letter.

COMMENT

18. (SBU) The Supreme Court ruling in favor of Jestina Mukoko is a welcome development. We expect that the "bombers" will soon receive a similar ruling from the Court. The Mukoko judgment is a public embarrassment to the State security apparatus and the ZANU-PF officials who were in charge of it at the time, including the police, intelligence officers, and Minister Mutasa. We expect that ZANU-PF will spin it as demonstrating that rule of law exists in Zimbabwe. We celebrate today's ruling, but we are all too aware that the State could easily invent other charges against these activists or obstruct the pending civil suits and investigations against the State agents who carried out the abductions. END

COMMENT.

PETTERSON